RAJESH KUMAR SONTEKE
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(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 1016 of 93

APPELLANT IN JAIL : Panch Ram son of Birju Kanwar aged about 40 years Cultivator, Resident of Village Binjkot, P.S.Kharsia, Distt. Raigarh, M.P.

V E R S U S

RESPONDENT : The State of Madhya Pradesh.

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE.

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(25) AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1016/1993

Panch Ram

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

CORAM: HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

J U D G M E N T

(26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1016/1993

Panch Ram

-Versus-

State of Madhya Pradesh (now Chhattisgarh)

CORAM: HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Shri Sachin Singh Rajput with the accused appellant.

Shri Ashish Shukla, Govt. Advocate with Shri M.P.S.Bhatia, P.L.. for the State.

J U D G M E N T
(Delivered on 29.09.2005)

The following oral judgment of the Court was delivered by **Dilip Raosaheb Deshmukh, J.**

This appeal is directed against the judgment dated 22nd September 1993 delivered by Shri Sharad Shrivastava, 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.90/92 whereby the appellant was convicted under Section 302 I.P.C. for committing murder of Buturam Kewat on 14.04.1992 at 7.00 A.M. in village Binjkot, P.S. Kharasiya, District Raigarh and was sentenced to imprisonment for life.

2. Briefly stated the prosecution story is that due to partition of land there was a family dispute between Buturam and Panch Ram. On 14.04.1992 when Buturam was going towards his *Kothar*, co-accused Mst. Bundu Kunwar, the mother of the appellant No.1, caught hold of Buturam Kewat and the appellant-Panch Ram inflicted a single blow by *Tangia* on the head of Buturam, due to which, Buturam died on the spot. Santram P.W.2, Sankunwar P.W.3 and Basanti P.W.4 saw the incident.

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3. F.I.R. was lodged by Phaguram P.W.1 in outpost Bhupdeopur of Police Station Kharasia on 14.04.1992 at 10.00 A.M. Sub-Inspector Ram Naresh Singh Parihar P.W.14 reached the spot and prepared inquest vide Ex.P.9. Dead body of Buturam was sent for post-mortem to Primary Health Center, Kharasia. Dr. G.N.Tiwari P.W.11 conducted the post-mortem on 14.04.1992 and found an incised wound 3" long and ½" broad in its middle over the skull in the left parieto-temporal junction vertical commencing from fronto-parieto junction anteriorly directing backward to the parieto occipital junction, 2" above the upper border of the Pinna of the left ear. The bone was cut in patieto-temporal region and lacerated brain matter was visible through the wound. Upon internal examination, he found fracture of the cranial bone in parieto-temporal area of the left skull. Meninges were cut and haemorrhage from the cut vessel was present. The brain was lacerated. Dr. G.N.Tiwari opined that the injuries were ante-mortem and were caused by some heavy cutting weapon with force so as to cut the bone and penetrate the skull. In his opinion, cause of death was head injury due to cutting and laceration of the brain. Nature of death was homicidal.

4. After completion of the investigation, the appellant was prosecuted under Section 302 I.P.C. along with his mother Mst. Bundu Kunwar. The appellant abjured the guilt, pleaded false implication due to land dispute and adduced the evidence of Jethuram D.W.1.

5. The prosecution examined as many as 14 witnesses. The trial Court convicted the appellant-Panch Ram on the basis of the

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ocular testimony of Santram P.W.2, Sankunwar P.W.3 and Basanti P.W.4. It however acquitted co-accused Mst. Bundu Kunwar.

6. Learned counsel for the appellant has contended that there is no legal and reliable evidence on record to prove the guilt of the appellant under Section 302 I.P.C. He has argued that the testimony of Santram P.W.2, Sankunwar P.W.3 and Basanti P.W.4 was not reliable since they are relatives of the deceased and hence interested witnesses. In the alternative, he has also argued that it is a case where only single blow was given by axe, and therefore, the offence if any, committed by the appellant would not travel beyond Section 304 Part II of the I.P.C. On the other hand, learned counsel for the State has supported the judgment of the trial Court.

7. We have heard the rival contentions and also perused the record of the Sessions Trial No. 90/92. Santram P.W.2 is the nephew of the deceased. He had stated that on 14.04.1992 between 7.00 to 8.00 A.M. while he was brushing his teeth, he saw from his *Bada* that Bund Kunwar had caught hold of Buturam Kewat and Panchram assaulted Buturam by *Tangia* on the head. Blood started oozing from the wound and Buturam fell unconscious and died soon thereafter. The testimony of Santram P.W.2 is corroborated by the testimony of Sankunwar P.W.3 and Basanti Bai P.W.4. Sankunwar P.W.3 is the wife of the deceased and has deposed that in the morning while her husband Buturam was going towards the *Kothar* she saw that Bundu Kunwar caught hold of Buturam and Panchram assaulted Buturam by a *Tangia* on the head which felled Buturam on the ground. She shouted

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whereupon Phaguram P.W.1 and Santram P.W.2 came and brought her husband home. Phaguram P.W.1 has also deposed in paragraph 2 of his testimony that he brought the injured Buturam to his house and asked him as to who had assaulted him whereupon Buturam told him that Panch Ram had assaulted him on his head by a *Tangia*. Basanti Bai P.W.4 is the wife of Phaguram P.W.1 and has corroborated the testimony of Santram P.W.2 in toto.

8. Learned counsel for the appellant has not been able to point out anything in the cross-examination of Basanti Bai P.W.4 or Santram P.W.2 and Sankunwar P.W.3 which would rebut their testimony and render it unworthy of credit. It is well settled that the testimony of a witness cannot be brushed aside merely on the ground that he or she is a relative of the injured. A relative or an interested witness would not like to shield the real culprit and implicate an innocent person. Therefore, law only requires that the testimony of such witnesses should be scrutinized with due care and caution. Having done so, we find that the testimony of Santram P.W.2, Sankunwar P.W.3 and Basanti Bai P.W.4 inspires confidence, is worthy of credit, consistent and reliable. Although during cross-examination of Santram P.W.2 it was suggested by the defence that one Sidar had assaulted Panch Ram by a *Tangia* and while Panch Ram ducked the *Tangia* hit Buturam. However, this defence has not been accepted by the learned trial Judge and we also find that no foundation for this suggestion has been led by the defence. The testimony of Dr. G.N.Tiwari P.W.11 clearly shows that Buturam had sustained an incised wound 3" long and ½"

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broad over the skull in the left parieto-temporal junction which had a fracture of the cranial bone underneath and meninges were cut and haemorrhage from the cut vessel was also present. In his opinion, the injury was caused by some very heavy cutting weapon with sufficient force so as to cut the bone and penetrate the skull. We, therefore, find no infirmity in the conclusion reached by the trial judge that the appellant Panch Ram had caused the death of Buturam by assaulting him by a *Tangia* on the head i.e. the vital part.

9. The only question which requires our consideration now is that what offence was committed by the appellant-Panchram. Although it has appeared in the prosecution evidence that there was some dispute relating to land between the appellant-Panch Ram and the deceased, yet there is absolutely nothing on record to even suggest that immediately before the occurrence there was a quarrel between Panch Ram and Buturam. At the time of the occurrence, Panch Ram assaulted Buturam on the vital part with such heavy force by a *Tangia* that it caused fracture of the cranial bone in the parieto-temporal region and the skull meninges were cut causing haemorrhage from the cut vessel. At the time of occurrence, the deceased Buturam was coming towards his *Kothar* and was unarmed. There is absolutely nothing on record which would be suggestive of a sudden quarrel or a sudden heat of passion during which the injury was inflicted. In our considered opinion, the fatal injury was inflicted by a very sharp cutting object by the appellant after complete deliberation on vital part intending to cause the death of Buturam.

10. After having considered the evidence led by the prosecution in its entirety and the facts and circumstances of the case, the requisite intention to cause the death of Buturam can safely be attributed to the appellant as has rightly been done by the trial Judge. We, therefore, find no infirmity in the judgment of the trial Court.

11. In the result, there is no substance in this appeal which fails and is accordingly dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani